

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 10, 2010

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2010-0973-DIS  
Petition By Cape Royale Utility District for Approval to Levy Standby Fees

Dear Ms. Castañuela:

Enclosed for filing, please find an original and 7 copies of the Executive Director's Agenda Backup Items in addition to the Response to Hearing Requests and memo filed September 3, 2010.

If you have any questions, please do not hesitate to contact me at (512) 239-2496.

Sincerely,

A handwritten signature in black ink, appearing to read "James Aldredge".

James Aldredge  
Staff Attorney  
Environmental Law Division

Enclosure

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## AN ORDER AUTHORIZING CAPE ROYALE UTILITY DISTRICT OF SAN JACINTO COUNTY TO ADOPT AND IMPOSE A STANDBY FEE

An application by Cape Royale Utility District of San Jacinto County (the "District") was presented to the Executive Director of the Texas Commission on Environmental Quality (the "Commission") for consideration of approval pursuant to TEX. WATER CODE §§ 5.122 and 49.231 (the "Code"). The District requests approval to adopt and impose an operational and maintenance standby fee on unimproved property in the District in the maximum amount allowed by Commission rules. The Commission has jurisdiction to consider this matter and the following Findings of Fact and Conclusions of Law are appropriate after examining the application and supporting documentation:

### FINDINGS OF FACT

1. The application of the District requesting authority to adopt and impose an operation and maintenance standby fee was filed with the Commission and the statutory filing fee was paid.
2. Notice of this application was published in the San Jacinto News-Times, a newspaper of general circulation in San Jacinto County, Texas, once a week for two consecutive weeks, on September 3, 2009 and September 10, 2009, the first publication thereof being more than thirty days prior to the date of consideration of this application.
3. Notice of this application was mailed to each owner of unimproved property within the District to be assessed a standby fee by certified mail, return receipt requested, more than thirty (30) days prior to the date of consideration of this application. By letters dated September 19, 2009 and October 12, 2009, landowners within the District have requested a contested case hearing.
4. The District's projected budget for the fiscal year ending June 30, 2010 indicates an operating fund deficit of approximately \$140,034 without standby fee revenue and adjusting the fund balance to a three month reserve.
5. The unimproved property subject to the standby fee is shown in the Utilities and Districts Section memorandum dated June 9, 2010, a copy of which is attached hereto and incorporated herein by reference.

6. The District's current service rate for 10,000 gallons of water and wastewater is \$69.31 per month.
7. The standby fee will be applied to supplement the District's operation and maintenance account.
8. The Executive Director has investigated the financial condition of the District, including the District's assets, liabilities, sources of revenue, level of utility service rates, and level of debt service and maintenance tax rates.
9. The Utilities and Districts Section memorandum, considered by the Commission, is true and correct and demonstrates that the adoption and imposition of a standby fee by the District, for operation and maintenance, on all developable but unimproved acreage in tier 1 of the District that has water and wastewater facilities and services available, and tier 2 of the District that has only water facilities and services available, is necessary to maintain the financial integrity and stability of the District. The Utilities and Districts Section memorandum further demonstrates that an operation and maintenance standby fee assessed in the amount of \$66 per equivalent single-family connection (ESFC) per year for tier 1 and \$33 per ESFC per year for tier 2 on unimproved property in the District, will fairly allocate the costs of District facilities and services among property owners in the District.
10. The application of Cape Royale Utility District for authority to adopt and impose a standby fee on unimproved property in the District should be granted as recommended in the Utilities and Districts Section memorandum.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider and grant this application pursuant to Section 49.231 of the Code.
2. The application of the District conforms in all respects to Section 49.231 of the Code and the Commission's order is in proper and legal form, and the purposes thereof are lawful.
3. In reviewing this application, the Commission has considered, among other things, the Utilities and Districts Section memorandum, the necessity for the standby fee to maintain the financial integrity and stability of the District, and the fair allocation of the costs of District facilities among property owners in the District.

NOW THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AS FOLLOWS:

1. The District may adopt and impose a standby fee for operation and maintenance for the three calendar year periods 2009, 2010, and 2011 in the amount of \$66 per ESFC per year for tier 1 and \$33 per ESFC per year for tier 2, on all developable, but unimproved property in tier 1 of the District that has water and wastewater facilities and services available and tier 2 of the

District that has only water facilities and services available as identified in Findings of Fact No. 5 and described in the Utilities and Districts Section memorandum.

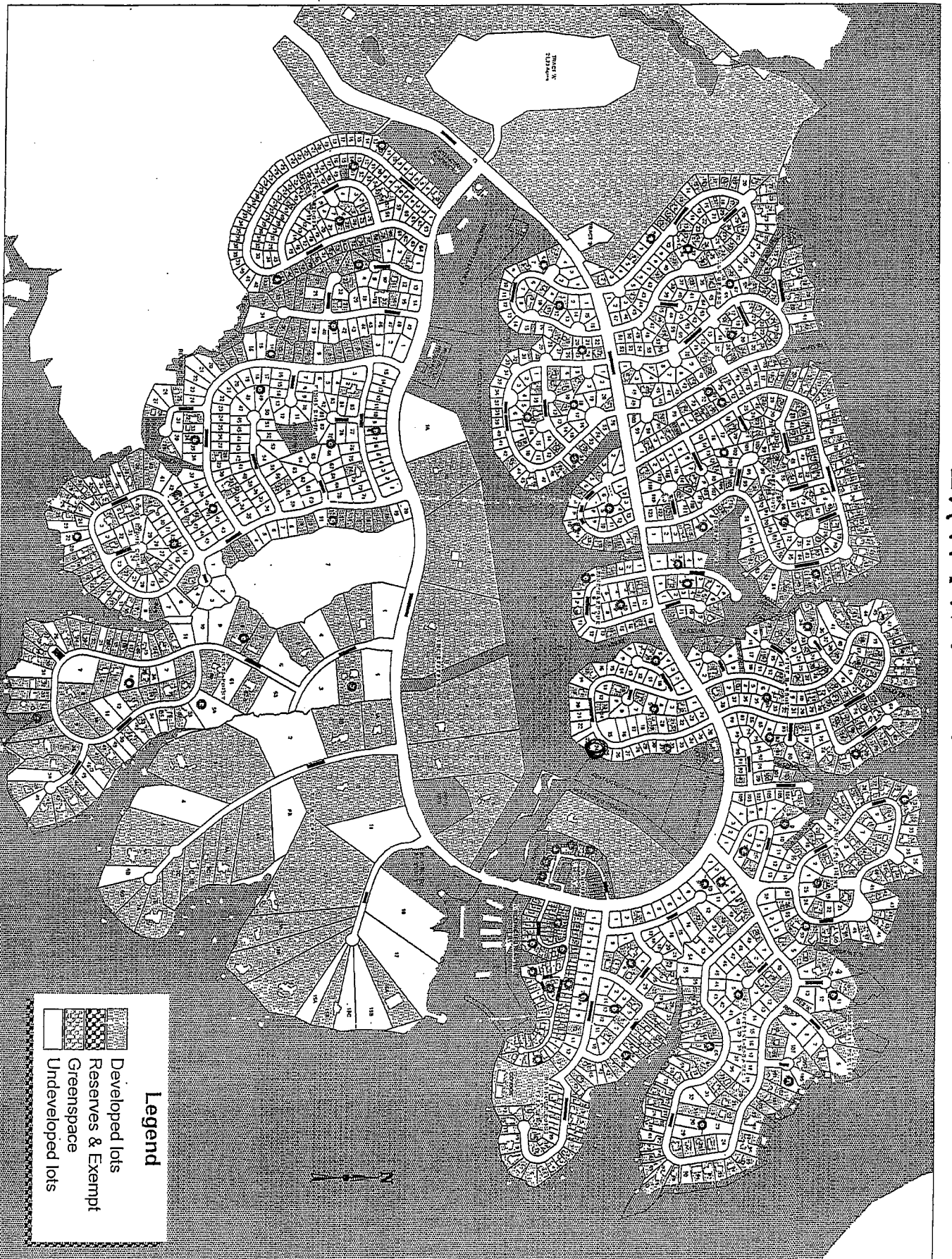
2. The proceeds of the portion of the standby fee authorized for operation and maintenance shall be applied to the District's operation and maintenance account. The Commission's approval for the adoption and imposition of a standby fee may be renewed for additional periods of not more than three (3) years each as provided by Section 49.231(h) of the Code. Any increase in the amounts of the approved standby fee or assessment of such fees to any additional tracts not identified in the Utilities and Districts Section memorandum will require Commission approval. The District may impose the standby fee approved herein by monthly, quarterly, or annual billing periods but may not assess the fee prior to January 1, 2009.
3. The District may, as authorized by Section 49.231 of the Code, exercise any of the rights and privileges associated with the imposition of standby fees.
4. The governing board of the District shall, within thirty (30) days from the date of this Order, cause a certified copy of this Order approving the standby fee to be recorded in the office of the County Clerk of each county in which a portion of the District lies.
5. The governing board of the District shall, within seven (7) days from the date of the issuance of this Order levying a standby fee, file with the Commission's Executive Director and the County Clerk of each county in which a portion of the District lies an update of the information required by Section 49.452 of the Code.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: DRAFT

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For the Commission

# EXHIBIT A



**Legend**

	Developed lots
	Reserves & Exempt
	Greenspace
	Undeveloped lots